IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION

JILLIAN WATKINS,

     Plaintiff,

v.   **CIVIL ACTION NO.: 3:22-cv-0109**
                                                                         JUDGE: Honorable Robert C. Chambers

LINCARE INC.,

     Defendant.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE
DOCUMENTS AND TESTIMONY RELATING TO
PAST COMPLAINTS AND SETTLEMENTS

Now comes Plaintiff by and through counsel to file her response in opposition to Defendant

Lincare Inc.'s ("Lincare") *Motion in Limine to Exclude Documents and Testimony Relating to Past*

Complaints and Settlements [Docket No. 233] relating to Plaintiff's exhibits previously disclosed

and identified as Bates Number LINCARE003442-3623.   For the reasons stated herein,

Defendant's Motion should be denied.

The Court should deny the Motion in Limine because the Court sits as the finder of fact in

this matter. In a bench trial, the Court's findings of fact are presumed to be based on admissible

evidence. *Kaufman v. U.S.,* 84 F. Supp. 3d. 519, 522 n. 1 (S.D.W. Va. 2015) (citing *Fishing Fleet.*

Inc. v. Trident Ins. Co., Ltd., 598 F.2d 925, 929 (5th Cir. 1979); *Harris v. Rivera,* 454 U.S. 339,

346 (1981) ("In bench trials, judges routinely hear inadmissible evidence that they are presumed

to ignore when making decisions"). "Courts are advised to deny motions in limine in non-jury

cases . . . . The more prudent course in a bench trial, therefore, is to resolve all evidentiary doubt

in favor of admissibility." *Accident Ins. Co. v. U.S. Bank,* Civil Action No. 3:16-cv-02621, at *8

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(D.S.C. Jun. 21, 2019); *Quality Plus Servs., Inc. v. Nat' Union Fire Ins. Co.,* Civil Action No.

3:18cv454, at *29- 30 (E.D. Va. Jan. 15, 2020).

Prior to Lincare's witnesses testifying, it is impossible to know the permissible uses of the

documents at issue (i.e., to impeach or for a permissible Rule 404(b) use). The Court knows the

Federal Rules of Evidence, and it knows what evidence may be given weight under those rules.

Consequently, there is no harm for the Court to defer a ruling on the admissibility of these

documents until such time as Plaintiff seeks to use them, if at all.

CONCLUSION

For the reasons stated above, the Court should deny Lincare's *Motion in Limine.*

JILLIAN WATKINS,
By Counsel,

 /s/ Rodney A. Smith
Rodney A. Smith (WVSB # 9750)
M. Alex Urban (WVSB # 13480)
108 ½ Capitol Street, Suite 300
Charleston, WV 25301
(T): 304-342-0550
(F): 304-344-5529
rod@LawWV.com
aurban@ LawWV.com

Guy R. Bucci (WVSB # 521)
Ashley N. Lynch (WVSB # 11714)
108 ½ Capitol Street, Suite 200
Charleston, WV 25301
(T): 304-550-5660
guy.bucci@outlook.com
ashleynlynch@outlook.com

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                                                          JUDGE: Honorable Robert C. Chambers**

LINCARE INC.,

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CERTIFICATE OF SERVICE

The undersigned, counsel of record for Plaintiff, Jillian Watkins, does hereby certify that on this 17th day of May 2024, that a true copy of the foregoing *Plaintiff's Response to Defendant's Motion in Limine to Exclude Documents and Testimony Relating to Past Complaints and Settlements* was served upon the defendant through the Court's Electronic Case Filing (ECF) system to the following:

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Vivian H. Basdekis
Blake N. Humphrey
FROST BROWN TODD LLP
vbasdekis@fbtlaw.com
bhumphrey@fbtlaw.com

Lawrence M. Kraus
Lea Gulotta James
FOLEY & LARDNER LLP
LKraus@foley.com
ljames@foley.com

Counsel for Defendant

</div>

/s/ Rodney A. Smith
Rodney A. Smith (WVSB # 9750)
M. Alex Urban (WVSB # 13480)
108 ½ Capitol Street, Suite 300
Charleston, WV 25301
(T): 304-342-0550
(F): 304-344-5529
rod@LawWV.com
aurban@ LawWV.com

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Ashley N. Lynch (WVSB # 11714)
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Charleston, WV 25301
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guy.bucci@outlook.com
ashleynlynch@outlook.com